UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS DISTRICT LODGE 160,
LOCAL LODGE 289

and Case 19-CD-502

SSA MARINE, INC.

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

MOTION REQUESTING THE BOARD TO RECONSIDER ITS JANUARY 22, 2010, DECISION AND DETERMINATION OF DISPUTE BY A PANEL OF AT LEAST THREE MEMBERS

Pursuant to Section 102.48(d)(1) of the Board's Rules and Regulations, the Regional Director for Region 19 ("Regional Director") of the National Labor Relations Board ("Board") files the instant motion requesting that the Board: (1) reconsider its January 22, 2010, Decision and Determination of Dispute, which is reported at 355 NLRB No. 3; because that decision was rendered invalid by the Supreme Court's decision in *New Process Steel, L.P. v. NLRB,* 130 S. Ct. 2635 (2010); and (2) issue a new Decision and Determination of Dispute in this matter by a panel of at least three Board Members. In support of his motion, the Regional Director shows as follows:

1. On June 10, 2009, Charging Party SSA Marine, Inc. ("SMI"), filed the charge in Case 19-CD-502 [Exhibit 1] alleging that International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 ("IAM"), had

violated Section 8(b)(4)(D) of the Act by threatening to coerce SMI through proscribed means (including picketing) if SMI did not reassign certain work from employees represented by the International Longshore and Warehouse Union ("ILWU") to employees represented by the IAM.

2. On June 16, 2009, having found that there was reasonable cause to believe that the Act was violated as alleged, the Regional Director issued a Notice of 10(k) Hearing [Exhibit 2] scheduling a hearing to permit the parties the opportunity to appear and present testimony regarding the dispute concerning the assignment of the following work tasks:

> The maintenance and repair work on cruise-ship related equipment at Terminal 91, Seattle, Washington.

["disputed work"]

3. From June 30 through July 2, 2009, a hearing officer conducted a hearing pursuant to Section 10(k) of the Act in which representatives of SMI, IAM, and ILWU appeared and presented evidence through witness testimony and documents concerning entitlement to perform the disputed work. Thereafter, the parties filed posthearing briefs with the Board.

4. On January 22, 2010, the two sitting members (Chairman Liebman and Member Schaumber) of the Board issued a Decision and Determination of Dispute, which is reported at 355 NLRB No. 3 [Exhibit 3], holding as follows: employees represented by the ILWU were entitled to perform the disputed work; the IAM was not entitled by means proscribed by Section 8(b)(4)(D) to force SMI to assign the disputed work to employees represented by it; and the IAM was required to notify the Regional

Director in writing within 14 days whether it would refrain from forcing SMI to reassign the work in a manner proscribed by the decision.

5. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB,* 130 S. Ct. 2635 (2010), which held that in order to exercise the delegated authority of the Board pursuant to Section 3(b) of the Act, a delegee group of at least three members must be maintained. Accordingly, the two-Member Board's January 22, 2010, Decision and Determination of Dispute in Case 19-CD-502 was rendered invalid.

6. On October 15, 2010, SMI filed a request with the Board for expedited reconsideration of Case 19-CD-502 by a panel of at least three members.

7. On December 15, 2010, a panel of three members issued a Decision and Determination of Dispute in Case 19-CD-502, which is reported at 356 NLRB No. 54 [Exhibit 4], determining, for the reasons set forth in its decision reported at 355 NLRB No. 3, that employees represented by the ILWU are entitled to perform the disputed work.

8. On May 24, 2011, the Board issued an Order [Exhibit 5] vacating its December 15, 2010, Decision and Determination of Dispute in Case 19-CD-502, on the basis that it had improvidently issued that decision because the Acting Regional Director for Region 19 had previously approved the withdrawal of the charge in Case 19-CD-502. The Board's May 24 Order, which is reported 356 NLRB No. 161, also remanded the matter to the Regional Director for further appropriate action.

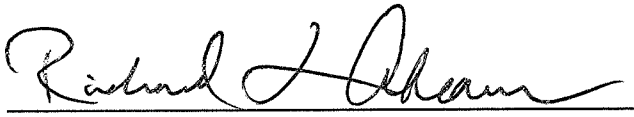
9. On May 26, 2011, the Regional Director issued an Order Revoking Approval of Withdrawal of Charge [Exhibit 6] and reinstating the charge in Case 19-CD-

502 on the basis that the IAM had taken action inconsistent with its agreement to comply with the Board's decision awarding the disputed work to employees represented by the ILWU and to refrain from taking any action proscribed by Section 8(b)(4)(D), which agreement had formed the basis for the Acting Director's approval of the withdrawal of the charge in this matter.

10. In light of the Board's Order vacating its December 15, 2010, Decision and Determination of Dispute, and the Supreme Court's *New Process Steel* decision rendering the Board's initial January 22, 2010 Decision and Determination of Dispute invalid, there is no binding or lawful Board decision determining which employees are entitled to perform the disputed work. Moreover, in light of the Regional Director's Order revoking the approval of the withdrawal of and reinstating the charge in Case 19-CD-502, this matter is ripe for review by a Board panel consisting of at least three Members.

WHEREFORE, the Regional Director respectfully requests that the Board reconsider its January 22, 2010, Decision and Determination of Dispute that is reported at 355 NLRB No. 3, and issue a new Decision and Determination of Dispute in this matter by a panel of at least three Board Members.

DATED at Seattle, Washington, this 27th day of May, 2011.



Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

INTERNET
FORM NLRB-508
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CD-502	6/10/09

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to contact	
International Association of Machinists (IAM), District Lodge 160, Local Lodge 289	Don Hursey	
c. Address *(Street, city, state, and ZIP code)*	d. Tel. No.	e. Cell No.
9315 15th Place South Seattle, WA 98108	206-762-7990	
	f. Fax No.	g. e-Mail

h. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* 4(D) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

The above-named labor organization, by and through its agents, has threatened to engage in proscribed activity (economic action, including picketing) if the Employer, SSA Marine, does not reassign mechanics' work at Pier 91 Smith Cove Terminal, Seattle, Washington from employees represented by the International Longshore & Warehouse Union (ILWU) to employees represented by it.

The instant jurisdictional dispute involves the assignment of work to employees represented by one of two competing Unions, who have both made a claim for the same work and the Employer requests that the Region hold a 10(k) Hearing as soon as possible to evaluate the merits of the competing claims on the traditional Board factors.

3. Name of Employer	4a. Tel. No.	b. Cell No.
SSA Marine	800-422-3505	
	c. Fax No.	d. e-Mail

5. Location of plant involved *(street, city, state and ZIP code)*	6. Employer representative to contact
Pier 91, 2001 West Garfield Street, Seattle, WA 98119	Jim McMullen, Attorney

7. Type of establishment *(factory, mine, wholesaler, etc.)*	8. Identify principal product or service	9. Number of workers employed
Port Terminal Services	Cargo transportation & handling	100+

10. Full name of party filing charge	11a. Tel. No.	b. Cell No.
James J. McMullen, Jr. Gordon & Rees LLP	619-230-7746	619-813-1934
	c. Fax No.	d. e-Mail
	619-696-7124	

11. Address of party filing charge *(street, city, state and ZIP code.)*
101 West Broadway, Suite 2000, San Diego, CA 92101

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Jim McMullen, Esq.
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

101 West Broadway, Suite 2000, San Diego, CA 92101
Address _____ *(date)* 6/ 9 /2009

Tel. No.	619-230-7746
Cell No.	619-813-1934
Fax No.	619-696-7124
e-Mail	jmcmullen@gordonrees.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

MACHINISTS DISTRICT LODGE 160,
LOCAL LODGE 289

and

Case 19-CD-502

SSA MARINE

and

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION

NOTICE OF 10(k) HEARING

PLEASE TAKE NOTICE that on the **30th day of June, 2009, at 10:00 a.m., at the James C. Sand Hearing Room, 29th Floor, Jackson Federal Building, 915 Second Avenue, Seattle, Washington,** pursuant to Section 10(k) of the National Labor Relations Act, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board upon the dispute alleged in the attached Charge that issued on the 10th day of June, 2009. At said hearing, the parties will have the right to appear in person or otherwise and give testimony.

The dispute concerns the assignment of the following work tasks:

The maintenance and repair work on cruise-ship related equipment at Terminal 91, Seattle, Washington.

IN WITNESS WHEREOF, the undersigned Regional Director, on

EXHIBIT 2

behalf of the Board, has caused this Notice of Hearing to be signed at Seattle, Washington, on this 16th day of June, 2009.

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

Attachments

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

Telephone: (206) 220-6300
Toll Free: 1-866-667-6572
Facsimile: (206) 220-6305
Agency Web Site: *http://www.nlrb.gov*

June 10, 2009

MACHINISTS DISTRICT LODGE 160,
LOCAL LODGE 289

and **Case 19-CD-502**

SSA MARINE

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that the attached Charge has been filed alleging that **Machinists District Lodge 160, Local Lodge 289** has violated Section 8(b)(4)(D) of the National Labor Relations Act. The charge will be investigated by the Regional Office. If the charge is found meritorious, the National Labor Relations Board will hear and determine the work jurisdiction dispute involved in the charge pursuant to Section 10(k) of the Act unless, within 10 days of the receipt of this Notice, the parties to the dispute submit to the Regional Office satisfactory evidence that they have adjusted the dispute or have agreed to a voluntary method of adjustment.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: ***http://www.nlrb.gov***. (See Attachment to this letter for instructions.) Of course, the Agency will continue to accept timely filed paper documents.

IN WITNESS WHEREOF, the undersigned Regional Director, on behalf of the Board, has caused this **Notice of Charge Filed** to be signed at Seattle, Washington on this 10th day of June 2009.

Sincerely,

Richard L. Ahearn

Richard L. Ahearn
Regional Director

Enclosures

Case assigned to: John H. Fawley
Telephone No.: (206) 220-6326
Email: John.Fawley@nlrb.gov

FORM NLRB-4399
(6-83)

STATEMENT OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD PURSUANT TO CHARGES FILED UNDER SECTION 10(k) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted before a Hearing Officer of the National Labor Relations Board.

Parties may be represented by an attorney or other representatives and present evidence relevant to the issues. *(Copies of exhibits should be supplied to the Hearing Officer and other parties at the time the exhibit is offered in evidence.)*

The 10(k) hearing is a nonadversary factfinding hearing and the technical rules of evidence are not controlling. The 10(k) hearing procedure shall conform, insofar as applicable, to the procedures set forth in Sections 102.64 to 102.68, inclusive, of the Rules and Regulations of the National Labor Relations Board and the parties' attention is also called to Sections 102.89 through 102.93, inclusive, of those Regulations.

An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. After the close of the hearing, one or more of the parties may wish to have corrections made in the record. All such proposed corrections, either by way of stipulation or motion, should be forwarded to the Board in Washington instead of to the Hearing Officer, inasmuch as the Hearing Officer has no power to make any rulings in connection with the case after the hearing is closed. All matter that is spoken in the hearing will be recorded by the official reporter while the hearing is in session. In the event that any party wishes to make off-the-record remarks, requests to make such remarks should be directed to the Hearing Officer and not to the official reporter.

Statements of reasons in support of motions or objections should be as concise as possible. Objections and exceptions may upon appropriate request be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

An original and two copies of all motions submitted during the hearing shall be served on the other parties.

The sole objective of the Hearing Officer is to ascertain the respective positions of the parties and to obtain a full and complete factual record upon which the duties under Section 10(k) of the National Labor Relations Act may be discharged by the Board. It may become necessary for the Hearing Officer to ask questions, to call witnesses, and to explore avenues with respect to matters not raised by the parties. The services of the Hearing Officer are equally at the disposal of all parties to the proceedings in developing the material evidence.

Upon the close of the hearing, the proceeding will be transferred to the Board and the Board will proceed either forthwith upon the record, or after oral argument, or the submission of briefs, or further hearing, to determine the dispute or make other disposition of the matter. Should any party desire to file a brief with the Board, eight copies thereof shall be filed with the Board at Washington, D.C., within 7 days after the close of the hearing: **Provided, however,** that in cases involving the national defense and so designated in the notice of hearing no briefs shall be filed, and the parties, after the close of the evidence, may argue orally upon the record their respective contentions and positions: **Provided further,** that in cases involving the national defense, upon application for leave to file briefs expeditiously made to the Board in Washington, D.C., after the close of the hearing, the Board may for good cause shown grant such leave and thereupon specify the time for filing. Immediately upon such filing, a copy shall be served on the other parties. Proof of such service must be filed with the Board simultaneously with the briefs. Such brief shall be printed or otherwise legibly duplicated: **Provided, however,** that carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Request for extension of time in which to file a brief shall be in writing and must be received by the Board in Washington, D.C., 3 days prior to the due date with copies thereof served on the other parties. No reply brief may be filed except upon special leave of the Board.

As provided in Section 102.112 of the Board's Rules, service on all parties of a request for an extension of time shall be made in the same manner as that utilized in filing the paper with the Board; however, when filing with the Board is accomplished by personal service, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph.

An exhibit number may be reserved for posthearing submission of exhibits by stipulation of the parties.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Hearing Officer may ask for oral argument if at the close of the hearing it is believed that such arguments would be beneficial to the Board's understanding of the contentions of the parties and the issues involved.

Voluntary adjustments consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. Upon request, the Hearing Officer will afford reasonable opportunity during the hearing for discussions between the parties if adjustment of the jurisdictional dispute appears possible.

Form NLRB-4338 (6/90)
(R19 – 3/94)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

June 16, 2009

MACHINISTS, DISTRICT LODGE 160,
LOCAL LODGE 289
Case: 19-CD-502

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).

(2) Grounds must be set forth in ***detail;***

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

REGULAR MAIL

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 - 14th Street, N.W., Room 11602
Washington, D.C. 20570

SSA Marine
Pier 91, 2001 W. Garfield St.
Seattle, WA 98119

Gordon & Rees, LLP
Attn: James J. McMullen, Jr., Attorney
101 W. Broadway, Suite 2000
San Diego, CA 92101

Leonard Carder, LLP
Attn: Robert S. Remar, Attorney
1188 Franklin St., Suite 201
San Francisco, CA 94109-6852

CERTIFIED MAIL NO.
7006 2150 0000 7460 4655

Machinists District Lodge 160,
Local Lodge 289
Attn: Don Hursey
9135 - 15th Pl. S.
Seattle, WA 98108

REGULAR MAIL

Pacific Maritime Association
Legal Department
Attn: Todd C. Amidon, Sr. Counsel
555 Market Street, Third Floor
San Francisco, CA 94105-5801

ILWU
1188 Franklin St., Suite 400
San Francisco, CA 94109-6852

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-508
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case: 19-CD-502	Date Filed: 6/10/09

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name
International Association of Machinists (IAM), District Lodge 160, Local Lodge 289

b. Union Representative to contact
Don Hursey

c. Address *(Street, city, state, and ZIP code)*
9315 15th Place South
Seattle, WA 98108

d. Tel. No.
206-762-7990

e. Cell No.

f. Fax No.

g. e-Mail

h. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* 4(D) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

The above-named labor organization, by and through its agents, has threatened to engage in proscribed activity (economic action, including picketing) if the Employer, SSA Marine, does not reassign mechanics' work at Pier 91 Smith Cove Terminal, Seattle, Washington from employees represented by the International Longshore & Warehouse Union (ILWU) to employees represented by it.

The instant jurisdictional dispute involves the assignment of work to employees represented by one of two competing Unions, who have both made a claim for the same work and the Employer requests that the Region hold a 10(k) Hearing as soon as possible to evaluate the merits of the competing claims on the traditional Board factors.

3. Name of Employer
SSA Marine

4a. Tel. No.
800-422-3505

b. Cell No.

c. Fax No.

d. e-Mail

5. Location of plant involved *(street, city, state and ZIP code)*
Pier 91, 2001 West Garfield Street, Seattle, WA 98119

6. Employer representative to contact
Jim McMullen, Attorney

7. Type of establishment *(factory, mine, wholesaler, etc.)*
Port Terminal Services

8. Identify principal product or service
Cargo transportation & handling

9. Number of workers employed
100+

10. Full name of party filing charge
James J. McMullen, Jr.
Gordon & Rees LLP

11a. Tel. No.
619-230-7746

b. Cell No.
619-813-1934

c. Fax No.
619-696-7124

d. e-Mail

11. Address of party filing charge *(street, city, state and ZIP code.)*
101 West Broadway, Suite 2000, San Diego, CA 92101

12. DECLARATION
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Jim McMullen, Esq.
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 101 West Broadway, Suite 2000, San Diego, CA 92101

(date) 6/ 9 /2009

Tel. No. 619-230-7746
Cell No. 619-813-1934
Fax No. 619-696-7124
e-Mail jmcmullen@gordonrees.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 *and* SSA Marine, Inc. and International Longshore and Warehouse Union. Case 19–CD–502

January 22, 2010

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. SSA Marine, Inc. (the Employer), filed charges on June 10, 2009, alleging that the International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 (IAM), violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the International Longshore and Warehouse Union (ILWU).[1] The hearing was held from June 29 to July 2, 2009, before Hearing Officer Sara Dunn. Thereafter, the Employer, the IAM, and the ILWU each filed a posthearing brief.

The National Labor Relations Board[2] affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, we make the following findings.

I. JURISDICTION

The parties stipulated that the Employer, a Washington corporation, operates at marine terminals and provides stevedore services in Puget Sound, including at cruise ship terminals in Seattle, Washington. They also stipulated that during the past calendar year, a representative period, the Employer purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Washington. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the IAM and the ILWU are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

For over 40 years, the Employer and its predecessors have operated and managed marine cargo terminals and provided stevedoring services at various ports located on the Puget Sound in Washington, including the Port of Seattle where the instant dispute arose.

Since the 1940s, the Employer has had collective-bargaining agreements with the IAM that have covered all maintenance and repair (M&R) work on equipment owned and/or leased by the Employer in the Puget Sound area. Since at least 2002, the agreement between the Employer and the IAM has stated that "IAM-represented employees will maintain and repair all equipment owned or leased by [the Employer] in the Puget Sound area."

Traditionally, the Employer has referred most of its M&R work on Employer-owned or -leased equipment to employees represented by the IAM. Those employees often do M&R work onsite at various terminals in the Puget Sound area. In the event that the work is complicated or requires special tools or manuals, the equipment is transported to terminal 18, where IAM-represented employees have always performed M&R work for the Employer, its affiliates, and its predecessors.

The Employer has also had a longstanding relationship with the ILWU, through a multiemployer association. The Pacific Maritime Association (PMA) bargains with the ILWU on behalf of companies at the various ports on the West Coast, including the Port of Seattle. For more than 40 years, the Employer has been a member of the PMA and has utilized ILWU-represented employees to provide traditional longshore work. ILWU-represented employees have also performed certain M&R work for the Employer and other PMA members at several ports along the West Coast, although not in the Puget Sound area. The collective-bargaining agreement covering the ILWU-represented employees who work for the Employer was negotiated by the ILWU and the PMA.

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[1] The Pacific Maritime Association (PMA) filed a Motion to Intervene in this case, which was denied by the Regional Director for Region 19 on June 26, 2009.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___F.3d___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries. L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

On July 1, 2008, the PMA and the ILWU entered into a Memorandum of Understanding (MOU) setting forth an agreement for the years 2008–2013. Pursuant to a provision in the MOU, the Employer, in exchange for the ILWU's acceptance of labor-saving technologies (among other ILWU concessions), would assign to ILWU mechanics M&R work on equipment at "all new marine terminal facilities" that commence operations after July 1, 2008.

The Port of Seattle recently completed construction of terminal 91, a passenger cruise terminal facility located at pier 91, which had previously been used as an open pier and yard for cargo ships. The Employer then moved its preexisting cruise-ship operations from terminal 30, where IAM-represented employees had been performing the M&R work, to the new facility at terminal 91. Terminal 91 began regularly operating as a passenger cruise terminal on April 24, 2009. That operation is seasonal; terminal 91 will receive cruise ships from about April to about October each year.

The Employer assigned the M&R work at terminal 91 to ILWU-represented employees, who have performed it ever since.[3] The work is currently being performed by one full-time ILWU-represented mechanic. A part-time, ILWU-represented mechanic, dispatched from the PMA-ILWU joint dispatch hall, works on the days when passenger vessels are present, usually Wednesdays, Saturdays, and Sundays. The M&R work at terminal 30 continues to be performed by IAM-represented employees.

Upon learning that the Employer had assigned the terminal 91 M&R work to ILWU-represented employees, the IAM filed a grievance under its collective-bargaining agreement with the Employer. On May 8, 2009, an arbitrator sustained that grievance and directed the Employer to make its IAM-represented employees whole. The arbitrator did not, however, direct the Employer to reassign the disputed work to those employees.

On May 12, 2009, the Employer received a letter from IAM Local 289 Business Agent Don Hursey, stating that the IAM would take all actions necessary to obtain reassignment of the M&R work at terminal 91 back to the IAM. Additionally, the IAM threatened to engage in concerted activity, including picketing, if the Employer did not reassign the disputed work to employees represented by the IAM.

[3] The work is being performed by ILWU-represented employees of Harbor Industrial, the company contracted by SSA Marine to perform the disputed work at terminal 91. The parties stipulated that for purposes of the 10(k) proceedings, SSA Marine was the employer of the ILWU-represented employees because, under the contract with Harbor Industrial, SSA Marine controls and assigns the work in dispute.

B. Work in Dispute

The parties stipulated that the work in dispute is the maintenance and repair on the Employer's stevedoring and terminal service power equipment while it is present at Terminal 91 in Seattle, Washington.

C. Contentions of the Parties

No party is arguing that this case presents a work-preservation dispute, and not a jurisdictional dispute, as contemplated by Section 10(k) of the Act. See, e.g., *Machinists District 160 Local 289 (SSA Marine)*, 347 NLRB 549, 550 (2006). All parties agree that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. The parties also agree that the IAM and the ILWU have competing claims for the M&R work at Terminal 91. Each labor organization asserts that its collective-bargaining agreement covers the disputed work.

The IAM contends that the work in dispute should be assigned to employees it represents based on the factors of collective-bargaining agreements, past practice, area and industry practice, relative skills, economy and efficiency of operations, job loss, and friction. The IAM further contends that the Board should take into account the arbitrator's finding that the Employer's assignment of the work to ILWU-represented employees violated its collective-bargaining agreement with the IAM. The ILWU contends that the work in dispute should be assigned to employees it represents based on the factors of employer preference, economy and efficiency of operations, and job loss. The ILWU argues that the factors of collective-bargaining agreements, area and industry practice, and relative skills are "at worst neutral" and, therefore, "do not favor changing the status quo."

The Employer's contentions largely track those of the ILWU. In particular, the Employer emphasizes its preference and that economy and efficiency of operations favor continuing the work assignment to ILWU-represented employees. It also asserts that maintaining the status quo would reduce the potential for interunion friction at Terminal 91 because it would eliminate the need for ILWU-represented longshoremen to interact with mechanics represented by the IAM.

D. Applicability of the Statute

The Board may proceed with determining a dispute pursuant to Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005).

This standard requires finding that there is reasonable cause to believe that there are competing claims for the disputed work between rival groups of employees and

that a party has used proscribed means to enforce its claim to the work. Id. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. Id.

1. Competing claims for work

The parties stipulated, and we find, that the ILWU and the IAM both claim the work in dispute.

2. Use of proscribed means

As described, on May 12, 2009, the Employer received a letter from the IAM stating that it would take all actions necessary, including picketing, to obtain assignment of the disputed work. Such a threat establishes reasonable cause to believe that the IAM used proscribed means to enforce its claim to the work in dispute. *Laborers Local 731 (Tully Construction Co.)*, 352 NLRB 107, 109 (2008).

3. No voluntary method for adjustment of dispute

Finally, the parties stipulated, and we find, that there is no agreed-upon method for the voluntary adjustment of this dispute that would bind all parties.

We therefore find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB* v. *Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence of a Board certification concerning the employees involved in this dispute.

As indicated above, the Employer is subject to collective-bargaining agreements with both the IAM and the ILWU. The IAM's current collective-bargaining agreement with the Employer provides that "IAM-represented employees will maintain and repair all equipment owned or leased by [the Employer] in the Puget Sound area." This language clearly covers the work in dispute.[4]

That work, however, is arguably subject to the ILWU-PMA agreement as well. Under section 1.731 of that agreement, PMA employers must assign to ILWU mechanics M&R work on equipment at "all new marine terminal facilities." At the same time, section 1.731 is limited by a July 28, 2008 letter of understanding between the PMA and the ILWU. Under that letter, a PMA employer may vacate a "red-circled facility" and relocate its operations to another facility within the same port and retain its incumbent non-ILWU mechanic work force. The "red-circled facility" exception, however, does not apply to newly constructed terminals subject to ILWU jurisdiction under section 1.731. Accordingly, it appears that the M&R work at Terminal 91 is covered by the ILWU's contract *only if* Terminal 91 is considered a new terminal facility.

The parties vigorously debate that question. On the one hand, the Employer and the ILWU emphasize that terminal 91 has an entirely new passenger building, new gangways to facilitate passengers boarding the cruise ships, and some new equipment, all of which favors their contention that terminal 91 is new. On the other hand, the IAM points out, correctly, that terminal 30 was a "red-circled facility," and argues that the changes at terminal 91, which has always been in existence in some form, did not transform it into a new facility. In particular, the IAM emphasizes that the vast majority of the equipment housed at terminal 91 was simply relocated from terminal 30, which favors its contention that terminal 91 is not new. The record lends support to both parties' contentions. In that circumstance, we find that the ILWU has asserted at least a colorable contract claim to the work in dispute.[5]

Nevertheless, we find that the language of the IAM's agreement indisputably covers such work. Accordingly, we find that the factor of collective-bargaining agreements slightly favors an award of the work in dispute to employees represented by the IAM. See *Laborers*

[4] In making this finding, we do not rely on the May 8, 2009 arbitration award obtained by the IAM because the ILWU was not a party to that proceeding and was not bound thereby. See *Machinists District 160 Local 289 (SSA Marine)*, 347 NLRB at 551 fn. 4.

[5] The ILWU contends that we should defer to the joint determination of the Employer, the PMA, and the ILWU that terminal 91 is a "new" facility under the ILWU-PMA agreement, citing *ILWU (Howard Terminal)*, 147 NLRB 359 (1964). *Howard Terminal* involved a jurisdictional dispute that hinged on whether certain cranes were "new" or "old." Id. at 363. In considering the ILWU's contract claim to the work in that case, the Board observed that a joint industry board had determined that the crane work was "new" work to be assigned to ILWU-represented employees. Id. at 366. Contrary to the ILWU's suggestion, however, the *Howard Terminal* Board did not hold that contractual claims must always be resolved in accordance with the contracting parties' interpretation. Rather, as demonstrated in *Howard Industries*, the parties' interpretation is one factor to be considered in all the circumstances. There, the Board also considered the applicable contract language itself and the reasons for its inclusion in the parties' agreement. Id. We have taken the same approach here.

Michigan District Council (Walter Toebe Construction Co.), 353 NLRB No. 114, slip op. at 3 (2009).

2. Employer preference and current assignment

The factor of employer preference is generally entitled to substantial weight. See *Iron Workers Local 1 (Goebel Forming)*, 340 NLRB 1158, 1163 (2003). Edward DeNike, the Employer's senior vice president, testified that the Employer preferred to assign, and has assigned, the disputed work to employees represented by the ILWU. DeNike explained that the Employer had made a commitment as a member of the PMA to award M&R work at new facilities to the ILWU, and he testified that "it was in the best interests of the industry for [the Employer] to go along with that commitment."

The IAM contends that the Board's usual practice of according considerable weight to an employer's preference is inappropriate here because the Employer provided no basis for its preference other than its commitment under the PMA's contract with the ILWU. Don Hursey, the IAM's business representative, testified that the PMA "forced" DeNike to say that he did not prefer the IAM anymore. Although DeNike never explicitly denied that he was pressured by the PMA, he testified that the term "forced may be a little heavy." The IAM argues that DeNike's testimony "[did] not in any way deny the thrust of the conversation—that [the Employer] was going to assign the disputed work to the ILWU not because of a free and rational choice . . . but because of some kind of outside pressure being placed upon it."

The Board does not generally examine the reasons for an employer's preference unless there is evidence that the employer was coerced into its preference. Compare *Local Laborers 829 (Mississippi Lime Co.)*, 335 NLRB 1358, 1360 fn. 5 (2001) (deferring to employer preference where there was no evidence that it was not reflective of free and unencumbered choice) with *Longshoremen ILWU Local 50 (Brady-Hamilton Stevedore Co.)*, 223 NLRB 1034, 1037 (1976), reversed on other grounds 244 NLRB 275 (1979) (employers' "preference" that changed only after union's members engaged in a work stoppage that forced the reassignment of work was not representative of a free and unencumbered choice). Here, even if the Employer's preference had been influenced by its obligations as a member of the PMA, that would not establish coercion or that its preference was somehow illegitimate. Moreover, contrary to the IAM's contention, the record shows that the Employer's preference to use ILWU-represented mechanics at Terminal 91 was based not only on its contractual obligations, but also on the potential friction between the two unions. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the ILWU.

3. Employer past practice

The Employer has a practice of assigning M&R work in the Port of Seattle to IAM-represented mechanics. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the IAM.

4. Area and industry practice

Both IAM and ILWU mechanics perform M&R work on the West Coast. In Seattle, the majority of this work is done by IAM-represented mechanics. In the nearby, similarly sized Port of Tacoma and other Puget Sound facilities, most M&R work is performed by ILWU-represented employees. We find that both unions have a practice of performing work of the kind in dispute and, accordingly, that this factor does not favor an award to either group of employees. See *Laborers Michigan District Council (Walter Toebe Construction Co.)*, supra, slip op. at 5.

5. Relative Skills

Since at least 1999–2000, mechanics represented by the IAM have performed M&R work on cruise ships at the Port of Seattle. Darrell Stephens, a maintenance manager for the Employer, testified at a 2006 Board hearing in another case[6] that IAM mechanics are "the most qualified people that we can possibly assemble." At the hearing in the instant matter, Stephens testified that he still maintains that opinion. Additionally, IAM mechanics are required to possess more tools than ILWU mechanics, and the IAM provides an on-site library to assist its mechanics in their M&R work.

The record also establishes that employees represented by the ILWU have successfully, and without complaint, performed the work in dispute since April 2009. DeNike testified that ILWU-represented mechanics are competent and skilled to perform the disputed work. Moreover, John Castronover, the ILWU-represented mechanic employed full time at terminal 91, has over 20 years of experience working as a mechanic or technician and has obtained certifications in several types of skills relevant to M&R work.

On this record, we find that employees represented by both unions have the skills and training necessary to perform the work in question. This factor, therefore, does not favor an award of the disputed work to either group of employees.

[6] *Machinists District 160 Local 289 (SSA Marine)*, 347 NLRB at 552.

6. Economy and efficiency of operations

The Employer contends that ILWU-represented mechanics provide certain efficiencies over IAM-represented mechanics. Joseph Weber, an area manager for the PMA, testified that ILWU-represented mechanics, unlike those represented by the IAM, can perform traditional longshore work during times when M&R work is unavailable. Additionally, DeNike testified that, although the Employer currently utilizes one full-time ILWU-represented mechanic at Terminal 91, it can order additional mechanics from the PMA-ILWU joint dispatch hall when cruise ships are in port.

The IAM contends that it would be more efficient for the Employer to have a full-time work force of steadily employed IAM-represented mechanics than having to call for additional mechanics from the PMA-ILWU joint dispatch hall.

In the circumstances of this case, particularly because the need for mechanics at Terminal 91 may vary depending on weekly and seasonal demands, we agree with the Employer that the ILWU-represented mechanics provide certain efficiencies. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the ILWU.

7. Job Loss

The Board will consider job loss when making an award of the work in dispute. See, e.g., *Iron Workers Local 40 (Unique Rigging)*, 317 NLRB 231, 233 (1995). Weber testified that the use of ILWU-represented mechanics at Terminal 91 prevented at least one layoff, and DeNike testified that the work assignment did not result in the layoff of any IAM mechanics. On the other hand, the IAM generally contends that the Employer's "reassignment" of the IAM's "historical work" caused some loss in hours of work for IAM-represented employees. The IAM also argues that, if the work had been properly assigned to IAM-represented employees, there would have been no job losses for ILWU-represented employees because they had never previously performed such work in the Seattle area. In these circumstances, we find that the factor of job loss does not favor either group of employees.

Conclusion

After considering all the relevant factors, we conclude that employees represented by the ILWU are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and economy and efficiency of operations, both of which favor the ILWU-represented employees. We find that these factors outweigh the factors that favor an award of the work to IAM-represented employees: past practice and collective-bargaining agreements, the latter of which favors the IAM only slightly. In making this determination, we are awarding the work to employees represented by the ILWU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of SSA Marine, represented by the International Longshore and Warehouse Union, are entitled to perform maintenance and repair work on SSA Marine's stevedoring and terminal service power equipment while it is present at Terminal 91 in Seattle, Washington.

2. International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force the Employer to assign the disputed work to workers represented by it.

3. Within 14 days from this date, International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. January 22, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 *and* SSA Marine, Inc. and International Longshore and Warehouse Union. Case 19–CD–502

December 15, 2010

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On January 22, 2010, the two sitting members of the Board issued a Decision and Determination of Dispute in this proceeding, which is reported at 355 NLRB No. 3.[1] On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. On October 15, 2010, SSA Marine, Inc. (the Employer) filed a request with the Board for expedited reconsideration of the case by a panel of at least three members.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has decided that employees represented by the International Longshore and Warehouse Union are entitled to perform the work in dispute for the reasons stated in the decision reported at 355 NLRB No. 3 (2010), which is incorporated herein by reference.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of SSA Marine, represented by the International Longshore and Warehouse Union, are entitled to perform maintenance and repair work on SSA Marine's stevedoring and terminal service power equipment while it is present at Terminal 91 in Seattle, Washington.

2. International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force the Employer to assign the disputed work to workers represented by it.

3. Within 14 days from this date, International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. December 15, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

[2] By letter to the Board dated October 18, 2010, the International Association of Machinists (the IAM) objected to the Employer's request for expedited reconsideration, characterizing it as an "attempt to submit further briefing to the Board on the merits of the underlying 10(k) dispute." Specifically, the IAM objected to the Employer's purported failure to "limit its letter to a simple request[ ] for an expedited ruling." In resolving this jurisdictional dispute, we rely solely on the 10(k) record that is properly before the Board, which includes the hearing officer's report, hearing transcript, exhibits, and posthearing briefs. See Board Rules and Regulations Sec. 101.35.

International Association of Machinists and Aerospace Workers District Lodge 160, and Local Lodge 289 *and* SSA Marine, Inc. and International Longshore and Warehouse Union. Case 19–CD–502

May 24, 2011

ORDER VACATING AND REMANDING

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

The Regional Director's Motion to Vacate the Board's Decision and Determination of Dispute in this case and to remand to the Regional Director is granted. Accordingly, the Board's Decision and Determination of Dispute that issued on December 15, 2010[1] in this case is vacated as having been improvidently issued and this matter is remanded to the Regional Director for Region 19 of the National Labor Relations Board for further appropriate action.

Dated, Washington, D.C. May 24, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] 356 NLRB No. 54.

EXHIBIT 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS DISTRICT LODGE 160,
LOCAL LODGE 289

and Case 19-CD-502

SSA MARINE, INC.

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

ORDER REVOKING APPROVAL OF WITHDRAWAL OF CHARGE

On January 22, 2010, the two sitting Members of the Board issued its initial Decision and Determination of Dispute in this matter, which is reported at 355 NLRB No. 3. That decision determined that employees represented by the International Longshore and Warehouse Union ("ILWU") were entitled to perform the disputed work and that the International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 ("IAM") was not entitled by means proscribed by Section 8(b)(4)(D) to force SSA Marine, Inc. ("SMI") to assign the disputed work to employees represented by it. Subsequently, the IAM notified the Region in writing that it agreed to comply with that decision and to refrain from taking any action proscribed by Section 8(b)(4)(D). In light of that written agreement, the Region sought and obtained SMI's agreement to withdraw its charge. On February 11, 2010, the Acting Regional Director for Region 19 approved the withdrawal of the charge in the instant matter.

Following withdrawal of the charge, SMI filed a request with the Board for expedited reconsideration of the case in light of the Supreme Court's decision in *New Process Steel, L.P. v. NLRB,* 130 S.Ct. 2635 (2010), which had the effect of rendering invalid the two-Member Board's initial Decision and Determination of Dispute in this matter. On December 15, 2010, the Board, by a three-Member panel, issued a Decision and Determination of Dispute, which is reported at 356 NLRB No. 54 and which again determined that employees represented by the ILWU were entitled to perform the disputed work and that the IAM was not entitled by means proscribed by Section 8(b)(4)(D) to force SMI to assign the disputed work to employees represented by it. On May 24, 2011, the Board issued an Order vacating its December 15, 2010, Decision and Determination of Dispute in this matter on the basis that its decision had

EXHIBIT 6

been improvidently issued due to the charge having been withdrawn. The Board's May 24, 2011, Order also remanded the matter to me for further appropriate action.

Subsequent to the Acting Regional Director's approval of the withdrawal of the charge in this matter, the Region was advised that the IAM had initiated an action seeking remedial relief from an arbitrator, including payments-in-lieu for the disputed work. By letter dated January 12, 2011, attorneys for the IAM further advised the Region that the IAM would not agree to refrain from seeking remedial relief before the arbitrator with respect to the disputed work. In light of the IAM's initiation of its action before the arbitrator, and its refusal to withdraw that action, I find that the IAM has taken action that is inconsistent with its original agreement to comply with the Board's decision awarding the disputed work to employees represented by the ILWU and to refrain from taking any action proscribed by Section 8(b)(4)(D). As that agreement formed the basis for the Acting Regional Director's approval of the withdrawal of the charge in this matter, I hereby revoke the prior approval of the withdrawal of the charge, and reinstate the charge in this matter.

Accordingly, **IT IS HEREBY ORDERED** that the approval of the withdrawal of the charge in Case 19-CD-502 is revoked, and the charge is reinstated.

DATED at Seattle, Washington, this 26th day of May, 2011.

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2011, I caused copies of Order Revoking Approval of Withdrawal of Charge to be served upon each of the following parties by Facsimile and United States postage pre-paid mail:

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Dennis J. Snook

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2011, I caused copies of Motion Requesting the Board to Reconsider its January 22, 2010, Decision and Determination of Dispute by a Panel of at Least Three Members to be served upon each of the following parties by E-File, E Mail, and United States postage pre-paid mail:

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Kathlyn L. Mills, Secretary